REMARKS

This is a Response to the final Office Action mailed on November 3, 2010 and the Advisory Office Action dated February 10, 2011. A request for continued examination ("RCE") and petition for a one month extension of time is submitted herewith. The Director is authorized to charge the RCE and petition for one month extension of time and any additional fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3714652-505 on the account statement.

Claims 1-11, 13-14 and 16-22 are pending in the application. Claims 12 and 15 were previously canceled. In the Office Action, Claims 1-11, 13-14 and 16-22 are rejected under 35 U.S.C. §103. In response, Claims 1-2, 6, 17-20 and 22 have been amended, and Claim 21 has been canceled. The amendments do not add new matter. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

In the Office Action, Claims 1-8, 13-14 and 17-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over German Patent No. 26 09 520 to Kimura ("*Kimura*") and U.S. Patent No. 4,598,826 to Shinbach ("*Shinbach*"). Applicants respectfully traverse the rejection for at least the reasons set forth below.

Independent Claims 1, 17-18 and 20 have been amended to recite, in part, a retortable, flexible container comprising opposed front and back walls sealed together proximate to their edges to define an internal space, each of the front and back walls comprising a 3-layer laminate of polyethylene/aluminum foil/polypropylene. A pair of tear-limiting strips is applied to each wall between the layer of aluminum foil and the layer of polypropylene so that the strips coincide substantially on the opposed walls. The amendments are supported in the specification, for example, at page 7, lines 11-17 and Figure 2. In contrast, the cited references are deficient with respect to the present claims.

The retortable, flexible containers of the present claims are of simple construction yet have means of preventing propagation of an initial tear in an undesired direction or area. The flexible containers include opposed front and back walls comprising a 3-layer laminate of polyethylene/aluminum foil/polypropylene, which are especially suitable for retortable applications (e.g., capable of withstanding a specified thermal processing in a closed retort at

temperatures above 100 °C). An internally located pair of tear-limiting strips is applied to each wall between the layer of aluminum foil and the layer of polypropylene so that the strips coincide substantially on the opposed walls. This internal location of the pair of tear-limiting strips within the film itself is advantageous in that it better maintains the tear-limiting strips at the desired location, for example, during retorting conditions.

The internally located pair of strips are spaced from about 1 mm to 2 mm apart, are about 1 mm to about 5 mm in width and have a thickness from about 20 to about 50 microns. By setting limits to the area available for tearing and defining such area entirely within a wall of the container, the problem of the tear propagating off the top edge of the container, leaving the mouth not completely opened, is avoided. See specification, page 2, lines 14-21. Further, by limiting the propagation of the opening tear to a defined path, a cleaner open may be obtained and the likelihood of spillage, waste and messing is reduced. See specification, page 5, lines 7-13.

FIG. 2 illustrates in cross section an embodiment of laminated wall sections to which the tear-limiting strips are applied. In this embodiment, tear-limiting strips 22, 24, 26 and 28 are located internally in walls 12 and 14, being placed between adjacent layers of aluminium foil 38 and polypropylene 40. An external layer 42 of polyethylene is applied over the aluminium foil 38. The layers are sealed together at heat seal 44.

FIG. 4 illustrates a method of manufacturing the laminated flexible sheet material foil for use in forming the bag of FIG. 2. In the illustrated exemplary embodiment, the walls 12, 14 are constructed of a laminated sheet comprising an aluminium foil 42 on a polyethylene film 44. The tear-limiting strip comprises polyethylene strips 22, 26 applied to the aluminium foil 42.

As the laminated sheet 40 is moved by means of a conveyor system, the tear-limiting strips are covered by a layer 46 of polypropylene extruded over them. As shown in FIG. 4, the polypropylene layer 46 can applied by means of an extrusion hopper 48. Irregularities 50 in layer 46 can be smoothed out by passing the layer under a correcting roll 52.

Kimura and *Shinbach* fail to disclose or suggest a container having a pair of tear-limiting strips applied to each wall between the layer of aluminum foil and the layer of polypropylene so that the strips coincide substantially on the opposed walls as required by independent Claims 1, 17-18 and 20. Instead, *Kimura* discloses packages having a package body and an adhesive strip

or tape attached to the outside or on the outer surface of the package body that defines a tear line for opening an end of the package. See *Kimura*, page 4, lines 34-38. *Kimura* fails to disclose or suggest the presently claimed internally located pair of tear-limiting strips at any place in the disclosure.

Shinbach discloses a heat-sealable laminated package for hermetically sealing an object in a pouch of the package. See *Shinbach*, Abstract. *Shinbach* fails to disclose or suggest the internally located pair of tear-limiting strips at any place in the disclosure. Instead, *Shinbach* teaches that the tear strips 18 are still on the external surface of the inside of the package and not between any layers of the package walls. See *Shinbach*, Figure 2.

For at least the reasons set forth above, the cited references alone or in combination fail to disclose or suggest every element of independent Claims 1, 17-18 and 20. Moreover, the cited references fail to even recognize the advantages, benefits and/or properties of using the internally located pair of tear-limiting strips applied to each wall between the layer of aluminum foil and the layer of polypropylene in accordance with the present claims. Consequently, Claims 1, 17-18 and 20, along with the claims that depend from Claims 1, 17-18 and 20, are novel and non-obvious over the cited references.

Accordingly, Applicant respectfully requests that the obviousness rejection with respect to the present claims in view of *Kimura* and *Shinbach* be reconsidered and the rejection be withdrawn.

In the Office Action, Claims 9, 11 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimura* and *Shinbach*, and in further view of French Patent No. 2 832 698 to Jammet et al. ("*Jammet*"). Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimura* and *Shinbach*, and in further view of U.S. Patent No. 5,186,543 to Cochran ("*Cochran*"). Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejections of Claims 9-11 and 16 that depend from Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claims 9-11 and 16 in combination with the novel elements of Claim 1.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly request an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic

interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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